

HEARING DECISION

COVER SHEET

Re: V. WINDSOR C-1 SCHOOL DISTRICT

Student:

Parents:

Appearing for Parents:

Respondents' Counsel: John F. Brink
Mickes, Tueth, Keeney, Cooper, Mohan & Jackstadt
425 S. Woods Mill Road, Suite 300
St. Louis, MO 63017

Panel Members: Ms. Christine Montgomery Ms. Karen Schwartz

Panel Chair: J. Michael Cato
P.O. Box 668
Advance, Mo. 63730

Due Process Request Received: October 12, 2001

Due Process Hearing Held: December 17, 2001.

**BEFORE THE DEPARTMENT OF
ELEMENTARY AND SECONDARY EDUCATION**

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| IN THE MATTER OF; |) | |
| , |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | |
| |) | |
| WINDSOR C-1 SCHOOL DISTRICT, |) | |
| |) | |
| Respondent. |) | |
| |) | |

FINDINGS OF FACT, CONCLUSIONS OF LAW,
DECISION AND ORDER.

The hearing panel, after hearing the evidence in this matter makes the following findings of fact and conclusions of law and issues the following decision and order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The Student, , is a year old male who has resided with his parents within the boundaries of the Windsor C-1 School District (hereinafter “School District”) since May, 1999. Student had disabilities for purposed of the Individuals with Disabilities Education Act (hereinafter “IDEA”) 20 U.S.C. § 1400 et seq.
2. The Student is hearing impaired as a result of meningitis at a young age. Student receives auditory signals by way of a “Cochlear Implant”. A “Cochlear Implant” consists of both an internal and external device which must be “Mapped” periodically. “Mapping” a cochlear implant involves adjustment of the implanted device to allow the user to perceive sound. Students makes use of the cochlear implant both at home and at school.
3. On or about October 12, 2001, an IDEA due process proceeding was initiated on behalf of

Student, alleging that the District failed to provide related services and assistive technology that are necessary for [student] to receive a free appropriate public education (FAPE).

4. On October 24, 2001, a three-member panel empowered by the Missouri Department of Elementary and Secondary Education convened to hear evidence with respect to Petitioners' due process request. The hearing was open at the Petitioners request. Both parties were represented and had the opportunity to call and cross-examine witnesses.
5. The hearing panel members in this due process proceeding are as follows

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|--------------------------|----------------------|
| Michael Cato | Hearing Chairperson |
| Ms. Christine Montgomery | Hearing Panel Member |
| Ms. Karen Schwartz | Hearing Panel Member |

9. Appearing for the parents: Ms. , Pro Se.
10. Counsel for the School District: Mr. John F. Brink, Attorney at Law, 425 S. Woods Mill Road, Suite 300, St. Louis, MO 63017.
11. Student is an year old male who attends the third grade in Windsor C-1 School District for the 2001-2002 School Year.
12. Student is profoundly hearing impaired. Students' mode of communication is auditory-oral. Student received a cochlear implant in May 1992.
13. On February 7, 2001 the Students' IEP team agreed to provide certain services related to the use of his cochlear implant. These services included: (A) Control of static electricity, (B) A personal sound system, (C) Daily monitoring of the cochlear implant to insure good working condition, (D) transportation to cochlear implant team at Children's Hospital if troubleshooting attempts failed, (E) Batteries and cords made available for use during school hours, (E) Annual audiological evaluation.
14. Petitioner adduced no evidence concerning either control of static electricity or the use of a

personal sound system.

15. Petitioner alleged that the school district failed to complete repairs on the implant, leaving the Student without an implant at times. As Petitioner did not adduce any evidence concerning incomplete repairs of the implant unit, Petitioners allegations must fail.
16. Petitioner alleged that the school district failed to ensure that the implant unit was in proper working order. This panel notes the testimony of the Student's teacher who testified that certain basic measures were instituted each day to ensure that the implant was, in fact, working properly. While it may be true that more sophisticated measures are available to ensure the optimal use of the implant, no testimony or evidence was adduced concerning the necessity for such methods. This panel concludes that methods used by the school district, while perhaps not the most sophisticated, are sufficient to ensure that the cochlear implant is in proper working order.
17. The Student's cochlear implant requires cords to connect the internal and external components, a microphone and batteries as a power source. The evidence indicates that the school district provided the Student with batteries or cords on several occasions. The apparent difficulty arose when, on at least one occasion, a replacement cord was replaced with a broken one upon the completion of the school day. The panel notes that the Student's IEP team agreed to provide necessary supplies for the students use during the school day, which has occurred on several occasions. Petitioner did not point to any instances when supplies were required for use during the school day, but not provided. The evidence indicates that the school district consistently provided the student with the requisite supplies for use during the school day.
18. Petitioner did not directly challenge the Student's current Individual Education Program (hereafter "IEP") nor did Petitioner seek to prove that the Student's IEP team found that the use of an cochlear implant was necessary for the provision of a free appropriate public education

(hereafter “FAPE”). Absent a challenge by the Petitioner or a finding by the Student’s IEP team that the cochlear implant is necessary for the Student to receive FAPE, the School District need only ensure that the Student benefits from the services provided via the IEP.

19. The panel notes that the evidence presented indicates that the Student was making educational progress during the 2001-2002 school year. The Student’s progress report for the first quarter of the 2001-2002 school year reveals no “Unsatisfactory” marks nor anything grade lower than a “C” using the “A-F” grade scale.
20. The Petitioner alleges that the School District failed to provide “audiological services” that are implant specific. The Petitioner did not elaborate on what specific “audiological services” were necessary or sought. The evidence indicates that the Student was receiving the speech therapy recited in the current IEP. Further evidence was adduced which indicates that the Student had made some progress during his tenure at the School District such that time allotted for speech therapy had been reduced from prior IEPs’. Absent a showing of what type and level of audiological services are required, the Petitioners’ claim must fail.
21. On October 9, 2001 an audiological evaluation was conducted on Student by school district personnel. The evaluation revealed a lessened response to warble tone, but a improvement in word recognition from prior testing. The evaluation results were presented to Petitioner as well as members of the Student’s cochlear implant team. The School District concluded that the implant was working sufficiently to ensure that the Student continued to receive education benefit and that any required “mapping” of the implant would be in the nature of ‘fine tuning’. The Student’s cochlear implant was “remapped” on October 30, 2001. Petitioner presented no evidence contrary to the School Districts’ conclusion.
22. The School District provided transportation to the cochlear implant team at Children’s Hospital on at least two occasions. The panel notes the uncontested evidence which indicates that the

School District did not provide transportation for the remapping in October, 2001. As set forth above, the School District concluded that the remapping was beyond the scope of the February 7, 2001 agreement. The panel notes that the language of the February 7, 2001 IEP provides for transportation in the event that "...the implant is not functioning and all trouble shooting attempts have failed.." No evidence was adduced which would indicate that the Students' implant was not working during October 2001, or that attempts to trouble shoot the implant had failed. Petitioner presented no evidence concerning the necessity of the remapping or its' impact, if any, on the educational benefit received by the Student. Absent such a showing, the Petitioners' claim must fail.

23. This panel finds and concludes that the current IEP provides FAPE to the Student in that it provide a program of instructs that is reasonably calculated to provide educational benefit.

ISSUES AND PURPOSE OF THE HEARING :

Parents raised the following issues for the panels' consideration:

District's failure to provide "related services and assistive technology" that are necessary for [student] to receive a free appropriate public education. Specifically, in relation to the cochlear implant, the school district has;

1. failed to complete repairs on the unit have left [student] without an implant at time.
2. failed to insure the implant is in proper working order.
3. failed to provide supplies necessary to the units continued operation.
4. failed to provide audiological services that are implant specific.
5. failed to provided transportation for [student] to receive services related to the implant.

TIMELINE INFORMATION

The request for due process was received on October 12, 2001 with the original deadline for the holding of the hearing and mailing of the decision being November 26, 2001. On November 12, 2001 a request was received on behalf of the School District requesting an extension of the hearing timelines. The extension was granted by agreement of the parties and the timelines for both the hearing and decision were extended up to and including January 16, 2002. By agreement of the parties, this matter was set for hearing beginning December 17, 2001. Hearings were held December 17, 2001. On January 15, 2002 the hearing panel, by agreement of the parties, granted an extension of the time for rendering a written decision and for mailing same to the parties up to and including, January 23, 2002, based upon the illness of a hearing panel member.

PANEL MEMBERS

Members of the due process panel were: Michael Cato, Chairperson, Ms. Christine Montgomery, Panel Member and Ms. Karen Schwartz, Panel Member.

EVIDENCE ADDUCED:

At hearing, Petitioners' Exhibits, page 1-7 were admitted by stipulation. Petitioners' Exhibit pages 8-10 were not admitted. Petitioners' exhibit pages 11-38 were withdrawn by Petitioner. Respondent's Exhibits 1-22 were admitted by stipulation.

DECISION AND ORDER;

1. The School District has provided a free and appropriate public education that is reasonably calculated to provide Student with educational benefit.
2. All of Petitioners' claims are denied.

3. All other requests for relief are hereby denied.

APPEAL PROCEDURES:

Any party aggrieved by the decision of this panel may, pursuant to Chapter 536 of the Missouri Statutes, appeal this decision to a state court or a federal court, within 30 days of the date of the decision.

FOR THE HEARING PANEL:

All concur.

J. Michael Cato, Hearing Chairperson
Ms. Christine Montgomery, Panel Member
Ms. Karen Schwartz, Panel Member

Ms. Christine Montgomery, Panel Member

Ms. Karen Schwartz, Panel Member

J. Michael Cato, Hearing Chairperson

CERTIFICATE OF SERVICE

the undersigned certifies that a copy of the foregoing was served upon each party to this action,
TO-WIT;

John F. Brink
Mickes, Tueth, Keeney, Cooper, Mohan & Jackstadt
425 S. Woods Mill Road, Suite 300
St. Louis, MO 63017

by first class mail, return receipt requested and by depositing same in the United States Post Office in Advance, Missouri, with sufficient postage, on this _____ Day of January 2002.
